IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 4621 of 2001

Between:

Koti Sanyasi Rao (Gowtham) S/o Late Venkateswara Rao
Payakaraopeta, Visakhapatnam District.

..... PETITIONER

AND

1 The Thandava Cooperative Sugars Ltd., rep. by its Managing Director Payakaraopeta, Visakhapatnam District.
2 The Director of Sugar & Cane Commissioner Andhra Pradesh Hyderabad.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order, or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not regularizing the petitioner on permanent basis with all the attendant benefits as Clerk (Accounts) as arbitrary illegal and unconstitutional and grant such other relief or reliefs as the Hon'ble Court deems fit and proper in the interest of justice and in the circumstances of the case.

Counsel for the Petitioner: MR.KARNAMRAMESH

Counsel for the Respondent No.1.: MR.C.V.VINITHA REDDY

For Respondent No.2: G.P. for Cooperation.

The Court made the following :

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THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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WRIT PETITION NO.4621 OF 2001

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ORDER:

Heard Sri Karanam Ramesh, the learned counsel appearing for the petitioner, Sri C.V.Vinitha Reddy, the learned counsel appearing on behalf of the first respondent and the learned Government Pleader for Cooperation on behalf of the second respondent.

The petitioner herein, who has been working with the first respondent, filed this writ petition, *inter alia,* seeking for direction to both the respondents herein to regularize his services on permanent basis and grant the entire attendant benefits as Clerk (Accounts).

According to the petitioner, his father was an employee working with the first respondent in the capacity of Chief Accounts Officer. However, he died in harness while in service. Whereupon as per due request and recommendation made by the second respondent to the first respondent as per the letter D.O.Lr.No.15765/90/B1, dated 15.05.1990, it is stated that the petitioner being the dependent son of late K.Venkateshwara Rao, provide him employment on regular basis. Thereupon, instead of appointing him on regular basis, he was appointed as Clerk on

compassionate grounds on a consolidated salary of Rs.1,100/- per month vide proceedings in R.C.No.Estt.,/24/91, dated 11.03.1991 by the first respondent and since then he is in service and discharging the duties to the outmost satisfaction of the respondents. Even though, the petitioner has put in long service of more than 13 years, his services were not regularized in spite of requests made by him and also the latest representation made on 18.01.2001. However, the respondents are trying to fill up the vacancies on permanent basis without considering his name. It is the case of the petitioner that the State Government has 50% of share with the first respondent as thus, it has control over the first respondent. As the petitioner's claim for regular appointment on permanent basis with all the attendant benefits has remained unconsidered, he sought to place reliance on the service certificate issued on 22.06.2000 by the first respondent. Hence, the Writ Petition.

In the counter affidavit filed by the second respondent herein, it is stated that the appointment of the petitioner is not on any compassionate grounds, but purely on consolidated pay. In the appointment order, compassionate ground was mentioned by inadvertence. Thus, the petitioner's services were being engaged only during working season on temporary basis depending upon the exigencies and he was not being paid any retaining allowance. The petitioner's actual period of service does not exceed even four months in any year. Even the certificate dated 22.06.2000 was obtained by the petitioner from the then Managing Director only with a view to seek transfer of his working wife in the Education Department. Therefore, that certificate would not confer any right to the petitioner. In regard to the vacancies as existing, it is stated that having regard to the ban imposed under Act 2 of 1994, the same are not being taken up and even for filling up of any such regular vacancy, firstly the seasonal employees and temporary employees are to be taken into consideration, and it is only thereafter the petitioner's case comes up for consideration as he is working on consolidated pay. Therefore, the petitioner has no right to seek any relief. It is also pointed out that the scheme for appointment on compassionate grounds is not applicable to the Co-operative Societies i.e. the first respondent, in view of the memo issued by the Government vide No. 341/Sugar/A3/95-2, dated 21.11.1997. Hence, there could not have been any such appointment on compassionate grounds. Even otherwise, it is stated that having regard to the financial position and especially the society incurring losses year after year, the question of taking of any

appointment does not arise. In fact, the first respondent has sought exemption from payment of bonus, which has been granted by the Government in G.O. Ms. No.219, dated 01.10.2004. Further, it is also pointed out that if any regular appointment has to be taken up, it should be done only after due notification through Employment Exchange. It is also stated that the Writ Petition is not maintainable against the first respondent, a society, and there are about 370 temporary workers, out of them, 60 % employees are claiming the privilege of compassionate appointments, wherein there are 200 workers, who are seniors to the petitioner, were still working on temporary basis. Hence, there is no basis for petitioner's claim.

In reply, the petitioner sought to explain further that in fact, he was being engaged for all the twelve months in a year and was being paid with salary for all 12 months apart from contributing to Provident Fund Account and some of the statements of Provident Fund Account are filed along with the reply which clearly show that he has been engaged for 12 months. It is also pointed out that similarly situated persons have already been appointed prior and subsequent to that of the petitioner on compassionate grounds which include Sri S.Satyanarayana, Sri B.prasada Rao, Sri S.Adinarayana etc., Therefore, the respondents cannot say that there is no such scheme. The petitioner claims that only on the basis of compassionate appointment, his case requires to be considered accordingly for permanent recruitment.

Having heard the counsel on both the sides and on perusal of the material, the question which requires to be considered is as to whether the petitioner is entitled to claim for regular appointment or regularization of his services with the first respondents ?

The un-disputed facts, which remained on record, are that the petitioner's father was an employee and worked as Chief Accounts Officer, who died in harness while in service. Whereupon, the second respondent has recommended the petitioner as per the letter dated 15.05.1990 to be appointed on regular basis. However, the petitioner's appointment as per the letter dated 11.03.1991 shows that he was appointed on compassionate grounds but with a consolidated pay of Rs.1,100/-per month. The service certificate issued on 22.06.2000 also shows that the petitioner's

service with the first respondent all along and even the representation filed by the petitioner on 18.01.2001 are not being seriously challenged. These facts namely the father's employment, the appointment order disclosing it as if on compassionate ground and further supported by the service certificate dated 22.06.2000 have never been denied earlier. It is only for the first time, all these contentions are forthcoming on behalf of the respondents herein. No reason is assigned as to why the matter should be clear or taking such steps for correcting the errors if any which have occurred since the period is as long as from 11.03.1991. There is also no dispute to the fact that there are vacancies, which exist but however no steps have been taken for filling up the same for various reasons, which were denied on behalf of the petitioner. Though, it has been stated that the scheme of appointment on compassionate grounds is not applicable to the first respondent as clarified by the Government as per its Memo dated 21.11.1997. However, the fact remains that the petitioner was appointed only on such compassionate ground and apart from him; there are several such employees who have been appointed on compassionate grounds as evident from the counter itself. In fact, the counter says that there are 370 temporary workers and out of them 60% are appointed under the privilege of compassionate appointment. All these appointments are both prior to and subsequent to the appointment of the petitioner. Therefore, it is not open for the respondents to resolve from the said fact of applying the compassionate scheme. The question whether the said memo dated 21.11.1997 has any retrospective effect or not, is a moot point. The petitioner's appointment is admittedly prior to the issuance of the said memo. It is not the case of the respondents that before issuance of any such memo, there was any such provision barring the applicability of the scheme of compassionate appointments. Though it is stated on behalf of the respondents that the petitioner's case can be considered as and when he applies in the process of selection initiated by issuance of notification but however that itself cannot be a ground to take into consideration the petitioner's claim for regular appointment more so when vacancies are existing and especially the petitioner is already in service for the last about 13 years. The petitioner is not claiming any appointment afresh nor that the Society is sought to be burdened with any financial implications. The petitioner has been working all along and is being paid salary from out of the funds of the Society. Therefore, the question of any burden does not arise by issuing any regular appointment except with little variance, which will not have any much effect. It is also now well established that continuing any employee either

on temporary basis or otherwise to the detriment of the substantive rights to claim appointment on regular basis is deprecated not only by this Court but also by the Apex Court. It is not the case that there is any surplus staff. In view of the aforesaid circumstances, it has to be held that the petitioner's case duly requires to be considered for regularization of services in a vacancy, which is already in existence more so having been appointed on a compassionate ground.

The writ petition is accordingly allowed. The respondents are directed to consider the petitioner's case accordingly and pass orders in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs.

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B. PRAKASH RAO, J

14th February 2005.

Chvn.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Monday , the Fourteenth day of February Two thousand and five.

ASSISTANT REGISTRAR.

// TRUE COPY//

SECTION OFFICER.

To

1 The Managing Director ,Thandava Cooperative Sugars Ltd., Payakaraopeta, Visakhapatnam District.
2 The Director of Sugar & Cane Commissioner Andhra Pradesh Hyderabad.

3 Two C.Cs. to the G.P. for Cooperation, High Court Buildings, Hyderabad (OUT).

4 Two C.D. copies.